

Items such as vitamins or dietary supplements are considered foods and may qualify for the low State rate of tax. See 86 Ill. Adm. Code 130.310. (This is a GIL)

July 24, 2008

Dear Xxxxx:

This letter is in response to your letter dated February 20, 2008, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Starting from January 2008, our client, ABC mentioned above, has introduced vitamins and various supplements for selling to its patients.

We understand that such products are taxed at the lower rate of 2% when certain conditions apply. As these products are not directly consumed on the premises and are bought for outside use, we assume that the lower rate hereby applies. ABC is not a retail store as it, principally, provides medical services to its patients.

We hereby respectfully request your ruling regarding our client's situation and collection and payment of sales taxes. Would your department recommend the payment of use tax on purchases or collect the tax from the customer?

In addition, please find enclosed completed form ST-1 for the sales tax collected for January 2008 along with appropriate tax payment.

Thank you for you consideration. Please contact me should you need additional information.

DEPARTMENT'S RESPONSE:

The ST-1 for January 2008 and the accompanying payment contained in your letter has been forwarded to the appropriate Department personnel for processing.

Please review the Department's regulation at 86 Ill. Adm. Code 130.310, regarding the appropriate tax rates for food, drugs, medicines and medical appliances. Food that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption) is taxed at the rate of 1% plus applicable local taxes. Food is defined as any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice. Products that do not meet the appropriate definitions of food, drugs, medicines and medical appliances, or are food prepared by the vendor for immediate consumption, are taxable at the higher State sales tax rate of 6.25% plus applicable local taxes.

A medicine or drug is defined as any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and that purports on the label to have medicinal qualities. Therefore, if vitamins, food supplements or meal replacement drink mixes are intended by the manufacturer for human use and purport on the label to have medicinal qualities, such items may be considered to be drugs and are taxed at the low rate of tax.

Vitamins, food supplements or meal replacement drink mixes that do not make medicinal claims, would be generally be considered to be food. The manner in which food is taxed depends upon the nature of the establishment that is selling the food. Retailers who provide seating or facilities for on-premises consumption of food generally incur tax at the high rate (6.25% State rate) on all food sales (including bulk or grocery type items). However, if establishments sell both food that has been prepared for immediate consumption and bulk or grocery type items and also provide facilities for on-premises consumption, the lower rate of tax (1%) may be charged on the bulk or grocery type items if the dining facilities are physically partitioned from the area where food not for immediate consumption is sold and these facilities utilize a separate means of collection of receipts. See 86 Ill. Adm. Code 130.310(b)(3). The Department generally relies on the plain meaning of the term "physically partitioned" as in separated or divided by a tangible barrier. An eat-in-area that is partially isolated from the generally sales area of a store by the arrangement of display cases, service counters, or stub walls would qualify as "physically partitioned."

If establishments have no seating or facilities for on-premises consumption of food, the tax rate incurred on food sales is determined by whether the majority (over 50%) are bulk or grocery type sales or are sales for immediate consumption. If more than 50% of all food sales are for immediate consumption, the retailer must charge the high rate on all food sales. If more than 50% of all food sales are bulk or grocery type items, all food sales are taxed at the low rate with the exception of hot foods, food that has been prepared for immediate consumption, alcoholic beverages, and soft drinks. See Section 130.310(a). Food for immediate consumption is defined in the regulation as hot food and food made ready by the retailer to be eaten without substantial delay after the final stage of preparation by the retailer. See 86 Ill. Adm. Code 130.310(b)(6). Please note, however, that Section 130.310 regarding food is currently being reviewed and some changes to the regulation are expected.

Please note that the Board of the Regional Transportation Authority has increased the rate of the Regional Transportation Authority Retailers' Occupation Tax upon all persons engaged in the business of selling tangible personal property at retail in the metropolitan region. In Cook County the RTA tax rate is now 1.25% of the gross receipts from sales of food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks and food that has been prepared for immediate consumption) and prescription and nonprescription medicines, drugs, medical appliances and insulin, urine testing materials, syringes and needles used by diabetics. 70 ILCS 3615/4.03. This tax rate is imposed on the sale of the same items that qualify for

the State rate of 1%. Therefore, the current tax rate on these types of items is 2.25% in Cook County (1% State + 1.25% RTA).

You may also be aware that the RTA Board also increased the RTA rate to 1% on general merchandise sold in Cook County on items that do not qualify for the State 1% rate described above. Both these rate changes became effective April 1, 2008.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Richard S. Wolters
Associate Counsel

RSW:msk